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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1979

NO. 85, Original

THE STATE OF TEXAS,

Plaintiff,

V.

THE STATE OF OKLAHOMA,

Defendant.

MOTION FOR ENTRY OF JUDGMENT BY CONSENT OF PLAINTIFF AND DEFENDANT

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COME NOW the State of Texas and the State of Oklahoma by and through their respective Counsel of record and move this Honorable Court to enter judgment in this action by consent of the Plaintiff and Defendant as specified hereunder.

Counsel for Plaintiff, the Attorney General of Texas, Mark White, and Counsel for Defendant, the Attorney General of Oklahoma, Jan Eric Cartwright, represent to the Court that after long and careful study of the issues in dispute, they have come to agreement as to the pertinent facts and the applicable legal principles determinative of this action. Counsel for the States have concluded that it is in the best interest of each State and of the Court to dispose of this action by a judgment as specified hereunder.

WHEREFORE, the Plaintiff and Defendant, by and through their respective Counsel, move the Court to

enter the following judgment, each party hereby consenting thereto:

(1) This judgment determines the boundary line between Texas and Oklahoma along the South bank of the Red River in Grayson County, Texas, from a point on said River as it existed prior to the construction of the Texoma Reservoir Dam (Denison Dam) approximately 1973 feet West of the center line of said Dam, with its meanders, to a point on said River approximately 6103 feet East of the center line of said Dam, upon the Complaint, Answer and agreement of Counsel for Texas and Oklahoma.

(2) The source of the boundary line between Texas and Oklahoma from the 100th meridian of longitude to the eastern border of Oklahoma (which encompasses the boundary determined by this judgment) lies in the Treaty of 1819, 8 Stat. 252 (1821), which was construed by the Court in *United States v. Texas*, 162 U.S. 1 (1895), to be the south bank of the Red River. The Court later confirmed this definition of the boundary in *Oklahoma v. Texas*, 256 U.S. 70 (1921), and in a later partial decree therein, 261 U.S. 340, 341-42 (1923), defined the South bank as:

> ...the water-washed and relatively permanent elevation or acclivity, commonly called a cut bank, along the southerly side of the river, which separates its bed from the adjacent upland, whether valley or hill, and usually serves to confine the waters within the bed, and to preserve the course of the river.
>
> The boundary between the two states is on and along that bank at the mean level attained by the waters of the river when they reach and wash the bank without overflowing it.

> At exceptional places where there is no well-defined cut bank, but only a gradual incline from the sand bed of the river to the upland, the boundary is a line over such incline, conforming to the mean level of the waters, when at other places in that vicinity they reach and wash the cut bank without overflowing it.

(3) As a result of the partial decree in 1923 and other partial decrees arising from the same controversy, a boundary commission was established to take evidence, find facts and report to the Court. Said Commission filed a documentary report, 269 U.S. 536 (1925), styled as the Third Report of the Boundary Commissioners. At page 41 of said Report appears the following entry:

VII.

IN
GRAYSON COUNTY, TEXAS,
OPPOSIVE
MARSHALL AND BRYAN COUNTIES,
OKLAHOMA.

Public Hearing:
Sherman, Texas, May 7, 1925

We found no avulsive changes in
the position of the Red River in
this County and make no surveys.

(4) In 1939 the United States Army Corps of Engineers made surveys of certain tracts of land in Grayson County, Texas, known as Tract T-2-1, Tract T-2-2 and Tract T-2-4, whose northern boundaries coincide with the South bank of the Red River and the boundary determined by this judgment. Said surveys were made in anticipation of the condemnation of said Tracts for purposes of the construction of the Texoma

Dam Facility and Reservoir pursuant to an Act of Congress, 52 Stat. 1215 (1938). True and accurate reproductions of the original plats of said surveys are filed herewith as Appendices A-1, A-2 and A-3.

(5) On September 7, 1940, a judgment was entered in the United States District Court for the Eastern District of Texas making final the award of special commissioners as to Tract T-2-1. On November 23, 1940, judgment was entered in the United States District Court for the Eastern District of Texas making final the acquisition by the United States of Tract T-2-4. On December 28, 1939, a warranty deed was executed by P. O. Brack to the United States as to Tract T-2-2. Certified copies of said judgments and warranty deed, all containing descriptions of the property therein conveyed, are filed herewith as Appendices B-1, B-2 and B-3.

(6) On June 23, 1980, the Plaintiff and Defendant together retained a Registered Public Surveyor of the State of Texas to make a reenactment survey of Tract T-2-1, Tract T-2-2 and Tract T-2-4. On the basis of such survey it has been determined that, when tying back to the original South bank of the Red River, the northern boundaries of Tracts T-2-1, T-2-2 and T-2-4 (coinciding with the South bank of the Red River), as established by the U.S. Army Corps of Engineers in its survey of 1939 were correct at the time that survey was made, which was prior to the construction of the Texoma Reservoir Dam Facility. A certified copy of the plat of the survey commissioned by the States with the surveyor's certified explanation thereof is filed herewith as Appendices C-1 and C-2.

(7) The boundary between Texas and Oklahoma determined by this judgment coincides with the boundaries of Tracts T-2-1, T-2-2 and T-2-4 and is described as follows, with all bearings from the above referenced

judgment and deed descriptions, and all distances in feet:

BEGINNING at the Northwest corner of Tract T-2-1, from which the Southwest corner of the Daniel Dugan, Jr. Survey, dated January 9, 1840, bears S.4°-29'E.4313.1 feet, the same being identified on the Texas Co-ordinate System, North Central Zone as x=2,280,317.495 and y=785,284.349.

THENCE down the south bank of the Red River as it existed prior to the construction of the Texoma Reservoir and Denison Dam, with its meanders; S.55°-54'E.1030.8 feet; S. 68°-27'E.362.2 feet; S.87°-34'E.1198.9 feet; S.76°-01'E.394.5 feet; S.86°-01'E.1701 feet; S.76°-21'E.413.7 feet; 5.85°-37'E.1175.7 feet; S.85°-37'E.549.6 feet; S.88°-22'E.447.2 feet; N.89°-06'E.484.0 feet; N.86°-10'E.1370.5 feet; N.78°-08'E.528.9 feet to the mouth of Shawnee Creek at its confluence with the Red River, the same being the Northeast corner of Tract T-2-4.

(8) The boundary line delineated hereinabove is depicted by a line marked "STATE LINE" on the plat of the survey commissioned by the States and filed herewith as Appendix C-1.

(9) The construction of the Texoma Reservoir and Denison Dam did not alter the boundary between Texas and Oklahoma as the South bank of the Red River as it existed prior to such construction in any manner whatsoever.

(10) The State of Oklahoma, its officers, agents, representatives and citizens, are perpetually enjoined from disputing the sovereignty, jurisdiction and dominion of Texas over the territory adjudged to her by this decree; and the State of Texas, its officers, agents,

representatives and citizens, are perpetually enjoined from disputing the sovereignty, jurisdiction and domain of Oklahoma over the territory adjudged to her by this decree.

(11) The cost of this action shall be equally divided between the two States.

Respectfully submitted,

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